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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Policies and Rules
Concerning Toll Fraud

)
) CC Docket No. 93-292
)

COMMENTS OF TELEPORT COMMUNICATIONS GROUP, INC.

Teleport Communications Group, Inc. ("TCG") hereby responds to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above proceeding.¹ TCG supports the Commission's effort to reduce the risk of toll fraud for customers and telecommunications providers. TCG will specifically address the Commission's proposals on payphone and PBX toll fraud.²

Payphone Toll Fraud

TCG recently won a competitive bid from the Port Authority of New York and New Jersey to provide over 3000 payphones at New York's three metropolitan airports and the Port Authority bus terminal. TCG provides the payphone equipment itself, as well as the payphone access lines and first point of switching. TCG is

¹ Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, Notice of Proposed Rulemaking, FCC 93-496 (rel. Dec 2, 1993) ("Notice").

² The Commission indicates that its toll fraud policies are applicable to local exchange carriers ("LECs"), interexchange carriers ("IXCs"), equipment providers and customers. (Notice at ¶ 11). TCG suggests that the Commission address the role and obligation of competitive access providers in its policies aimed at preventing toll fraud, perhaps through a supplemental notice.

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obviously concerned about preventing toll fraud at its payphones, and has in fact taken a number of steps to do so.

The Commission seeks comment on whether it should adopt the Florida PSC payphone toll fraud plan as a national model.³ While the Florida PSC proposal for assigning the responsibility for toll fraud has some appeal, before adopting it as a national model some important issues and questions must be addressed.

The Florida model would absolve a payphone operator of responsibility for certain types of toll fraud where the operator has ordered call screening (OLS and BNS) for the line.⁴ Specifically, the LEC is responsible for toll fraud if there is a failure of its screening services, and the interexchange carrier ("IXC") is responsible if it fails to properly validate the call.⁵

While such failures can surely be a cause of toll fraud, they are by no means the only means by which fraudulent calls can be placed over payphones. As the Commission recognizes, toll fraud methods have become more sophisticated, and new forms of toll fraud develop as older methods are shut down.⁶ Any national policy modeled on the Florida plan would have to define who is responsible for toll fraud that is not attributable to a

³Notice at ¶ 31.

⁴Notice at ¶ 27.

⁵Id. at n. 42.

⁶Notice at ¶ 12.

failure of a screening service or a failure to validate.

Moreover, there will be clear financial incentives on the part of payphone providers to classify fraudulent calls as the produce of deficient screening or validation, and disputes about responsibility can be expected. Before adopting such a rule, the Commission must consider whether such disputes can be minimized, and whether reasonable standards can be enunciated for determining when a fraudulent call can be considered to have been caused by a failure of screening or validation. Because the Florida model is of relatively recent origin, perhaps the best course for the Commission is to monitor experience with that plan, and in particular to analyze and review how toll fraud disputes are resolved among its participants.

PBX Toll Fraud

The Commission proposes to adopt requirements that carriers include tariff liability provisions that warn customers of risks associated with toll usage, and requirements that carriers take other forms of action to convey these warnings to customers.⁷ TCG does not object to these proposals in principle. The Commission must recognize, however, that if it establishes such requirements they will become means by which a carrier can absolve itself of liability. PBX operators who experience toll

⁷Notice at ¶ 24.

fraud will undoubtedly challenge carriers as to whether the tariff language was adequate, or the warnings sufficient, as a means to transfer liability for toll fraud to their carriers. If the Commission intends to adopt such requirements, it should specify minimally acceptable notification methods and prescribe acceptable tariff language, so that parties have a common understanding of their obligations and such disputes do not occur.

TCG does not endorse any form of "shared liability" for PBX fraud, whereby the PBX owner can call on its carriers as jointly liable for fraudulent calls.⁸ Once carriers have satisfied their Commission-prescribed obligations to provide tariff and actual notification to customers, all responsibility for toll fraud prevention and detection must shift to the PBX owner. PBX operators are sophisticated telecommunications customers and are in the best position to monitor, detect and correct any fraudulent usage being perpetrated through their equipment.⁹ Outside toll fraud cannot occur without a PBX owner affirmatively allowing outgoing calling capabilities. Conversely, no outside toll fraud can occur if a PBX operator configures its equipment so that no outside caller can obtain dial tone using its

⁸Notice at ¶ 25.

⁹Notice at ¶ 20.

equipment.¹⁰ Once a PBX owner makes a decision to allow outgoing calling via its PBX, that operator must be assumed to have accepted the potential for liability for toll fraud from such calling.

TCG also does not believe that the Commission should require IXCs to provide network based toll fraud detection services.¹¹ The fact that some IXCs currently provide services to combat a perceived public problem indicates that the marketplace has already recognized the need for such services. At the same time, the fact that such services are available does not imply that all IXCs have a common carrier obligation to provide such services. Imposing toll fraud prevention requirements on IXCs may place an undue burden upon smaller IXCs who may not have the technical or financial capability to offer such services.¹² Rather than enunciating a standard to which all IXCs must adhere, the Commission should instead rely on the market to create incentives for providing quality network based protection services. The IXC that provides the best service at the best price will be rewarded with a larger market share.

¹⁰ Obviously, toll fraud could still occur if persons make unauthorized calls from the PBX operator's station sets on its premises, but such "inside" fraud must be considered the exclusive responsibility of the PBX operator.

¹¹ Notice at ¶ 26.

¹² For example, a small IXC may not have enough customers to make it economic for the carrier to install network based toll fraud prevention systems.

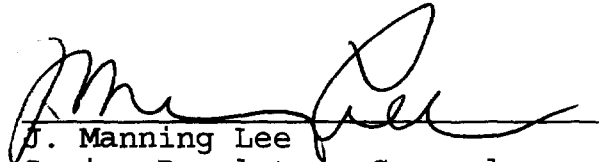
Conclusion

TCG supports the Commission's initiatives in seeking solutions to toll fraud. TCG believes that the Commission should actively involve itself in industry efforts aimed at preventing toll fraud. TCG also does not object in principle to the Florida PSC approach on payphone fraud, so long as the Commission establishes clear rules as to when subscription to screening services is a defense to toll fraud charges and when it is not. Unless such standards are identified in advance, adoption of the Florida approach might well simply produce more disagreements among industry participants about who is responsible for toll fraud. Finally, the Commission's proposals on notification about PBX fraud are acceptable to TCG, so long as the Commission specifies the minimally required form of such notification so

that parties have a shared understanding of their obligations. Beyond such notification, however, the responsibility for PBX fraud must rest on the operator of the PBX.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP

A handwritten signature in black ink, appearing to read "J. Manning Lee", is written over a horizontal line.

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